

GAHC010266182023



2024:GAU-AS:8350

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/6827/2023**

DIGANTA KALITA  
S/O LT. DEBENDRA NATH KALITA R/O HOUSE NO. 33 AMAR PATH MOTHER  
TERESA ROAD GEETANAGAR GUWAHATI DIST. KAMRUP M ASSAM PIN  
781024

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP BY THE COMMISSIONER AND SPL SECRETARY TO THE GOVT OF  
ASSAM PWD ROAD) DEPTT DISPUR GUWAHATI 6

2:THE DEPUTY SECRETARY  
GOVT OF ASSAM ESTT B BRANCH CONFIDENTIAL CELL PWRD DISPUR  
GUWAHATI 6

3:THE CHIEF ENGINEER  
PWRD (ROAD) CHANDMARI GUWAHATI DIST. KAMRUP M ASSAM PIN  
781003

4:THE INQUIRY OFFICER  
CHIEF ENGINEER BORDER ROAD PWRD CHANDMARI GUWAHATI ASSAM  
PIN 78100

**Advocate for the Petitioner** : MR. D CHOUDHURY, MR. K N CHOUDHURY,MR T  
CHAKRABORTY,MR J DAS

**Advocate for the Respondent** : SC, PWD, N GAUTAM

**BEFORE  
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Date of hearing : 16.08.2024**

**Date of Judgment : 22.08.2024**

**Judgment & order(CAV)**

Heard Mr. K. N. Choudhury, learned Senior counsel, assisted by Mr. T. Chakraborty, learned counsel, appearing on behalf of the petitioner. Also heard Mr. P. Nayak, learned standing counsel, Public Works(Roads) Department, Government of Assam, appearing on behalf of all the respondents.

**2.** The challenge in the present proceeding by the petitioner is to a Notification, dated 18.03.2023, issued by the Commissioner and Special Secretary to the Government of Assam, Public Works(Roads) Department, under Rule 6(1) of the Assam Services (Disciplinary & Appeal) Rules, 1964, placing the petitioner, herein, under suspension w.e.f. 18.03.2023, pending drawal of the departmental proceeding against him.

**3.** The facts, in brief, requisite for adjudication of the issue arising in the present proceeding, is noticed, as under:

The petitioner while working as an Assistant Engineer (T/C), Public Works(Roads) Department, East Guwahati Territorial Road Division, basing on allegations so levelled against him of having committed procedural and financial irregularities in utilization of funds while executing the works under MPLAD fund of a Member of Parliament, Rajya Sabha, during the period 2021-22 and 2022-23, came to be placed under suspension.

On receipt of a detailed report, dated 16.05.2023, from the Superintendent of Police, Chief Minister's Special Vigilance Cell, Assam, a departmental proceeding came to be initiated against the petitioner under Rule 9 of the Assam Services (Disciplinary & Appeal) Rules, 1964, *read with* Article 311 of the Constitution of India, vide issuance of a Show Cause Notice, dated 24.06.2023.

The departmental proceeding was so initiated against the petitioner within a period of 3(three) months from the date of issuance of the Notification, dated 18.03.2023. The petitioner, thereafter, submitted his written statement in the matter on 20.07.2023, after seeking for an extension earlier for submission of the same.

The suspension of the petitioner, not having been reviewed and no order in this connection issued to the petitioner along with the Show Cause Notice served upon him; he had instituted the present proceeding before this Court on 22.11.2023, praying for an interference with the Notification, dated 18.03.2023.

**4.** Mr. Choudhury, learned Senior counsel appearing on behalf of the petitioner; by reiterating the facts as noticed hereinabove, has submitted that in terms of the law laid down by the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary v. Union of India through its Secretary & anr.***, reported in ***(2015) 7 SCC 291***, it is a mandatory requirement that along with the memorandum of charges/ charge-sheet so served upon a delinquent officer/employee; a reasoned order is requisite to be so passed for the extension of the period of suspension.

**5.** Mr. Choudhury, learned Senior counsel, has categorically submitted that on the date when the Show Cause Notice, dated 24.06.2023, was so served upon the petitioner; it was not so accompanied by an order towards extending the period of suspension. In the above circumstances; he has submitted that the suspension of the petitioner, herein, after issuance of the Show Cause Notice as issued to him, cannot be said to be valid and accordingly, the petitioner is entitled to be reinstated in his services.

**6.** Mr. Choudhury, learned Senior counsel, by highlighting that suspension specially preceding the formulation of charges is essentially transitory or temporary in nature, and must perforce be of a short duration, has submitted that perusal of the Show Cause Notice, dated 24.06.2023, would go to reveal that the respondents have before issuing the same, brought on record, all requisite materials to establish the allegations levelled against the petitioner, herein, and accordingly, he submits that in addition to the suspension of the petitioner, not being sustainable, in view of the law laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra), the same will not also be permissible to be continued in view of the fact that the authorities have already brought on record, all requisite materials, to proceed against the petitioner in the departmental proceeding so instituted and accordingly, the intent for placing the petitioner under suspension having been satisfied; there would exists no further requirement to keep the petitioner under continued suspension.

**7.** In the above premises; Mr. Choudhury, learned Senior counsel, submits that the impugned Notification of suspension of the petitioner, does not mandate to be further continued and accordingly, the same is required to be set aside, reinstating the petitioner in his service, subject to the outcome of

the departmental proceeding already initiated against him.

**8.** Per contra, Mr. Nayak, learned standing counsel, Public Works(Roads) Department, at the outset, has submitted that the allegations as levelled against the petitioner, herein, are grave in nature and considering the misconduct as committed by the petitioner, it would not be in public interest to reinstate the petitioner in his service, before completion of the criminal as well as the departmental proceedings pending against him.

**9.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, has submitted that the competent authority after issuing the Show Cause Notice, dated 24.06.2023 and even before the petitioner could submit his written statement in defence in the matter; on a consideration of the materials coming on record, including the reports of the investigating agency; vide communication, dated 12.07.2023, extended the suspension of the petitioner for another period of 3(three) months w.e.f. 18.06.2023. It is further submitted that given the conduct of the petitioner coming on record; the competent authority of the Department had again reviewed the suspension of the petitioner; and extended the same vide an order, dated 29.09.2023, for a further period of 3(three) months w.e.f. 18.09.2023. Accordingly, the learned standing counsel, Public Works(Roads) Department, has submitted that the suspension of the petitioner, thereafter, also, on review, was being extended from time to time.

**10.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, by referring to the decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra), more particularly, paragraph No. 21, thereof; has submitted that the time-frame as mandated therein, for currency of a

suspension order as 3(three) months, is for a situation wherein the memorandum of charges/charge-sheet has not been served upon the delinquent officer/employee. He has further submitted that the Hon'ble Supreme Court had not laid down any time-frame for review of the suspension after the issuance of a memorandum of charges/charge-sheet within the 3(three) months so permitted for currency of a suspension.

**11.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, by referring to paragraph No. 22 of the decision rendered by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra), has submitted that although in paragraph No. 21, the law regarding fixing of a time-frame for currency of a suspension order, was laid down by the Hon'ble Supreme Court; the petitioner, therein, who was suspended in the year 2011, and a charge-sheet was issued to him in the year 2014, during the pendency of the matter before the Hon'ble Supreme Court, no direction came to be issued for his reinstatement.

**12.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, in the above circumstances, has submitted that a charge-sheet having been so issued and no time-frame so prescribed for a review of the suspension, after issuance of a charge-sheet within a period of 3(three) months as permitted for currency of a suspension order; it is for the departmental authorities to consider as to whether, it would be expedient to revoke the order of suspension and/or to continue to keep the delinquent officer/employee under suspension basing on the facts and circumstances as arising in each case.

**13.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, has further submitted that given the allegations so levelled against the

petitioner in the present proceeding; the departmental proceeding was so initiated against him on 24.06.2023, which is within the period during which the currency of an order of suspension is permitted to be so continued i.e. within a period of 3(three) months from the date of suspension of the petitioner, herein. The learned standing counsel has further submitted that even if it has to be construed that reasoned order is called for, to be issued after the Show Cause Notice was served on the petitioner; the same was complied with in the present matter, inasmuch as, the competent authority, basing on the materials coming on record, had on 12.07.2023, issued an order extending the suspension of the petitioner on a review thereof. Mr. Nayak, accordingly, has submitted that the order, dated 12.07.2023, extending the period of suspension of the petitioner, on review, having been so issued, proximate to the time of issuance of the Show Cause Notice, dated 24.06.2023, and before the petitioner could submit his reply thereon; there was no delay in issuing the order extending the period of suspension of the petitioner, herein, after the Show Cause Notice, dated 24.06.2023, was served upon him.

**14.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, has placed reliance on decisions of this Court wherein the order of suspension was permitted to be so reviewed even after a lapse of the period of 90 days with effect from the date of issuance of such order of suspension in the case of the petitioners involved in the said matters. In this connection, Mr. Nayak, has relied upon the decision of this Court in the case of ***Rama Nath Barman v. State of Assam***[WP(c)338/2022] wherein a co-ordinate Bench of this Court had held that regardless of the grounds on which the order of suspension has been ordered; if there has been no departmental proceeding initiated within a period of 3(three) months from the date of suspension, it would be incumbent upon the authorities to review the order of suspension and in the event, the

same is sought to be extended, a reasoned order would have to be passed by the competent authority justifying the extension of the period of suspension.

**15.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, has also relied upon a decision of this Court in similar lines as rendered in the case of **Pulin Saikia v. State of Assam** [IA(c)3702/2023]. The learned standing counsel has, thereafter, relied upon a decision in the case of **Atfur Rahman v. State of Assam** [WP(c)6842/2018] and by relying on paragraph No. 100 of the said decision, has contended that this Court had held that the period of 3(three) months as permitted for currency of a suspension order, should not be read in a pedantic manner in the sense that on completion of 3(three) months period where no such review is held, it would not immediately and automatically result in invalidation of the order of suspension. This Court further held that the authorities could still hold the review even after expiry of 3(three) months, however, under exceptional circumstances with proper reasons assigned and recorded in writing for not undertaking the review of the suspension before the period of 90 days, had lapsed.

**16.** Mr. Nayak, learned standing counsel, Public Works (Roads) Department, has, thereafter, referred to a decision of this Court in the case of **Prasanta Dutta v. State of Assam & ors.**, reported in **2023 (4) GLT 113**. After having made the above-noted submissions, the learned standing counsel has, by relying on a decision of this Court in the case of **State of Assam v. Ajit Sonowal** [Writ Appeal No. 114/2022], wherein, the Division Bench of this Court had held that even if a delinquent officer/employee is directed to be reinstated, he can still be placed under suspension again under Rule 6(1)(a) of the Assam Services (Disciplinary & Appeal) Rules, 1964, and has contended that the said power being vested with the respondent authorities; the

interference by this Court with the suspension of the petitioner, herein, would be a futile exercise.

**17.** Basing on the said premise; Mr. Nayak, learned standing counsel, Public Works(Roads) Department, has submitted that the period of suspension of the petitioner, herein, having already been so extended and the departmental proceeding in his matter, being underway; this Court would be pleased to refrain from interfering with the suspension of the petitioner and also refrain from directing for reinstatement of the petitioner, herein.

**18.** I have heard the learned counsels appearing for the parties and also perused the materials available on record.

**19.** At the outset, it is to be noted that the suspension of the petitioner, herein, vide Notification, dated 18.03.2023, was so issued by invoking the powers under Rule 6(1) of the Assam Services (Disciplinary & Appeal) Rules, 1964. The provisions of Rule 6(1), being relevant for adjudication of the issues arising in the present proceeding; the same is extracted hereinbelow:

***“6. Suspension – (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension-***

- (a) Whether a disciplinary proceeding against him is contemplated or is pending; or***
- (b) Where in the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest of the security of the State; or***
- (c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial: Provided that where the order of suspension***

***is made by an authority lower than the Appointing authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.”***

**20.** Given the submissions advanced by the learned counsels for the parties to the present proceeding; although the Notification, dated 18.03.2023, is under challenge, however, the arguments of the learned Senior counsel for the petitioner, tend to be one questioning the prolonged suspension of the petitioner even after a departmental proceeding was so initiated against him.

**21.** It is not in dispute that the petitioner after being placed under suspension vide the Notification, dated 18.03.2023, was served with a Show Cause Notice, dated 24.06.2023, i.e. within a period of 3(three) months from the date of his such suspension. The Hon’ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra), more particularly, in paragraph No. 21, had laid down the law that the currency of a suspension order should not extend beyond 3(three) months if within this period, the memorandum of charges/charge-sheet, is not served on the delinquent officer/employee: If the memorandum of charges/charge-sheet is served; a reasoned order must be passed for extension of the suspension.

**22.** The law as laid down by the Hon’ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra), is of 2(two) parts: one, contemplating a situation wherein a departmental proceeding has not been initiated against the delinquent officer/employee within a period of 3(three) months with effect from the date, such employee was placed under suspension. In such a circumstance, the Hon’ble Supreme Court has mandated that the currency of a suspension order shall not extend beyond 3(three) months, if within this period; the memorandum of charges/charge-sheet is not served upon the

delinquent officer/employee. The said directions of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra) would not have any application in the present proceeding, inasmuch as, the departmental proceeding was admittedly initiated against the petitioner within a period of 3(three) months from the date, he was so placed under suspension. Coming to the second part of the law as laid down by the Hon'ble Supreme Court i.e. if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of the suspension. This part of the law as laid down by the Hon'ble Supreme Court has to be read in conjunction of the first part i.e. the prescription as made for currency of a suspension order i.e. for a period of 3(three) months. Accordingly, understanding the law laid down by the Hon'ble Supreme Court in the manner as noted-above, it is to be held that if a memorandum of charges/charge-sheet is served upon a delinquent officer/employee within a period of 3(three) months from the date of his order of suspension; for an extension of the order of suspension, a reasoned order must be so passed. However, as to when such order extending the suspension is mandated to be issued, would be dealt with later, in this order.

**23.** The issue as arising in the present proceeding, also came up for consideration before a co-ordinate Bench of this Court in the case of **Prasanta Dutta**(supra). The co-ordinate Bench of this Court upon relying upon the law laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra), framed the following issues:

***“31. In the backdrop of the above submissions, the questions that arises for determination are:***

***(i) Whether a Government servant who has been put under suspension would be entitled to a direction for reinstatement on the basis of the law laid down in Ajay Kumar Chaudhury(supra) even though in the meantime, the Memorandum of charges/charge-sheet have been served upon him?***

(ii) *What is the right of the Government servant if the memorandum of charges/charge-sheet is served?*

(iii) *Whether in the facts of the case, the petitioner would be entitled to reinstatement to his services?*

**24.** Thereafter, the co-ordinate Bench of this Court, proceeded to draw its conclusions on the said issues. The conclusions as reached by the co-ordinate Bench of this Court in the case of **Prasanta Dutta**(supra), being relevant for the adjudication of the issues as arising in the present proceeding, is extracted hereinbelow:

*“32. The points for determination so framed above at Serial Nos. (I) and (II) can be taken up together as they are interlinked in view of the judgment of the Supreme Court in the case of Ajay Kumar Choudhary (supra). For deciding the same, this Court finds it relevant to take into account the facts involved in the case of Ajay Kumar Choudhary (supra). A perusal of paragraph Nos. 1 to 6 would show that the appellant therein was put under suspension on 30.09.2011. The said suspension continued and extended from time to time and it would be apparent from a perusal of the paragraph Nos. 2, 3 and 5. Paragraph No.6 of the said judgment categorically mentions that the charge sheet was expected to be served on the appellant before 12.09.2014. In the backdrop of the above, it is relevant to take note of paragraph Nos. 20, 21 and 22 of judgment of the Supreme Court in the case of Ajay Kumar Choudhary (supra) which are reproduced herein under:*

*“20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh v. State of Bihar and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of*

*commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.*

*21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.*

*22. So far as the facts of the present case are concerned, the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the respondents will be subject to judicial review."*

*33. A perusal of the above quoted paragraphs would show that the Supreme Court was spurred to extrapolate the quintessence of proviso to Section 167(2) Cr.P.C., 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries. The rationale behind the same was explained by the Supreme Court that if the Parliament consider it necessary that a person to be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/charge-sheet has not been served on the suspended person. The concept of right to speedy trial which is a facet of Article 21 of*

*the Constitution was engrafted to the departmental proceedings by observing that respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal. It is under such circumstances, the Supreme Court observed in paragraph No.21 and issued directions that the currency of a suspension order should not extend beyond three months, if within this period, the Memorandum of Charges/charge sheet is not served on the delinquent officer/employee. It was further observed that if the Memorandum of Charges/ charge-sheet was served, a reasoned order must be passed for the extension of the suspension. It was also observed that the imposition of a limit on the period of suspension would not be contrary to the interest of justice. The Supreme Court, though in paragraph 21 categorically directed that the currency of the suspension order should not extend beyond 3 (three) months, if within the said period the Memorandum of Charges/charge-sheet was not served on the delinquent officer/employee, but at paragraph 22 in the given facts before the Supreme Court, it was observed that in the meantime as the charge sheet was served upon the Appellant, the directions so made in paragraph No.21 would not be relevant to the appellant any longer and thereby granted the liberty to the appellant therein, if so advised, to challenge his continued suspension in any manner known to law and this action of the respondents would be subject to judicial review. Therefore, the question arises as to what is the right of a Government servant to be reinstated if during the proceedings before the Court, the Memorandum of Charge/Charge Sheet have been served.*

**34.** *It is also relevant at this stage to understand that in paragraph Nos. 11 and 12, the Supreme Court in the case of Ajay Kumar Choudhary (supra) has detailed out the ignominy faced by a Government servant when put under suspension. Paragraph Nos.11 and 12 of the said judgment in the case of Ajay Kumar Choudhary (supra) are quoted hereinbelow:*

*“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.*

*12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly*

*counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.”*

**35. A further perusal of the said judgment in Ajay Kumar Choudhary (supra) would clearly show that the right to speedy trial which is a facet of Article 21 of the Constitution was applied in the case of a suspension as well Page No.# 31/62 as right to a speedy Departmental Proceedings. It is in that perspective one has to understand that the Supreme Court sought to moderate suspension orders in cases of departmental/disciplinary enquiries also.**

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**37. This Court further finds it relevant to take into consideration an Office Memorandum bearing No.ABP.13/2018/Pt/35 dated 04.02.2020 issued by the Chief Secretary to the Government of Assam, Personnel (B) Department wherein following the law laid down by the Supreme Court in the case of Ajay Kumar Choudhary (supra) directed all the senior most secretaries of all the departments to ensure that the Memorandum of Charges/charge sheet is served upon the delinquent officer/employee before the expiry of the 3 (three) months from the date of issuance of the order of suspension. It was also stipulated in the said Office Memorandum that the senior most secretaries of all the departments shall also ensure that the currency of the suspension order should not extend beyond three months if within this period the Memorandum of Charges/charge sheet is not served on the delinquent officer/employee. Further to that, it was stipulated that, if the Memorandum of Charges/charge sheet is served within 3 (three) months of suspension, a reasoned order must be passed for the extension of the suspension, wherever necessary. In order to speed up the Disciplinary Proceedings, the officer proposing for suspension was mandated vide the said Office Memorandum to ensure that the charges are framed and submitted to the disciplinary authority within two weeks from the date of passing of the suspension order. It was further specified that after the issuance of the Memorandum of Charges/charge sheet, the Senior most secretaries shall undertake review within 6 (six) months as regards the desirability to further continue with the suspension order. It was further stipulated that the senior most secretaries would be held responsible if cases of suspension in their respective departments are not dealt with and reviewed accordingly. Further to that, all the departments were directed to submit quarterly return to the Personnel (B) Department with details about the suspension order issued, Memorandum of Charges/charge sheet served upon the delinquent officer/employee and if any extension of suspension period is given etc. The Personnel Department was also directed to compile the reports received from all the departments and place before the Chief Secretary to the Government of Assam for a periodical review every 3 months of the last 3 months suspension orders for further necessary action.**

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 42. *The next question which arises for consideration is in respect to the second part of the declaration by the Supreme Court in the case of Ajay Kumar Choudhary (supra) to the effect that if the Memorandum of Charges/charge sheet is served, a reasoned order must be passed for extension of suspension. Therefore, it is the opinion of this Court that at the time of or immediately upon the Memorandum of Charges/charge sheet is served, the Disciplinary Authority is also required to apply its mind as regards the necessity to continue the suspension or not. In such circumstances, the Disciplinary Authority is required to pass a reasoned order as to why the suspension of the delinquent employee is to be continued. This being the mandate of the law declared by the Supreme Court under Article 141 of the Constitution is binding and has to be followed in letter and spirit. It is pertinent herein to note that in the Office Memorandum dated 04.02.2020, the said aspect of the matter is mentioned. However, the authorities are required to enforce the same with all vigor else it would amount to contravention of the law declared by the Supreme Court."*

*(emphasis added)*

**25.** This Court is in respectful agreement with the reasoning as contained in the decision of the co-ordinate Bench of this Court in the case of **Prasanta Dutta**(supra). In the case of the **Prasanta Dutta**(supra); the co-ordinate Bench of this Court having recorded a categorical finding that at the time of issuance of the memorandum of charges and/or immediately upon the memorandum of charges/ charge-sheet is served upon the delinquent, the disciplinary authorities is also required to apply its mind as regards the necessity to continue the suspension or not and pass a reasoned order as to why the suspension of the delinquent officer/employee is to be continued; this being the mandate of law declared by the Hon'ble Supreme Court under Article 141 of the Constitution of India, is binding and has to be followed in letter and spirit. The implementation of the law declared by the Hon'ble Supreme Court in paragraph No. 21 in the case of **Ajay Kumar Choudhary**(supra), in the State, was so done vide issuance of an Office Memorandum, dated 04.02.2020, issued by the Chief Secretary to the Government of Assam,

Personnel(B) Department, wherein, it was mandated that as follows:

***“It is therefore directed that all the Senior Most Secretaries of all the Departments shall ensure that the Memorandum of charges/charge-sheet is served on the delinquent officer/employee before the expiry of three months of period from the date of issuance of order of suspension. They shall also ensure that the currency of the suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee. If the memorandum of charges/charge-sheet is served within 3(three) months of suspension, a reasoned order must be passed for the extension of the suspension, whenever necessary.”***

**26.** The respondent State having already issued the said Office Memorandum, dated 04.02.2020, a right accrues to the petitioner, herein, for seeking a direction for his reinstatement in his service on account of the fact that on the date of issuance of the memorandum of charges/charge-sheet and/or on the date of it being served upon him; a reasoned order as mandated to be so issued in terms of the provisions of the law declared by the Hon’ble Supreme Court in paragraph No. 21 of its decision in **Ajay Kumar Choudhary** (supra) as well as Office Memorandum, dated 04.02.2020, was not so done, rendering the continuation of the suspension, to be null and void.

**27.** Having noticed the said decision pertaining to the issue of prolonged suspension and the law declared in the matter in the case of **Ajay Kumar Choudhary**(supra) and implemented by the State respondents vide the issuance of the Office Memorandum, dated 04.02.2020; this Court is of the considered view that the respondent authorities cannot act in violation of the law as laid down in the case of **Ajay Kumar Choudhary**(supra) and it being a law declared under Article 141 of the Constitution of India, it would be binding on all concerned in the country.

**28.** Having noticed the above position; this Court again would like to refer back to the law as declared by the Hon'ble Supreme Court in the case **of Ajay Kumar Choudhary**(supra) and contained in the opening lines of paragraph No. 21. For a ready reference; the same is again extracted hereinbelow:

***“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of the suspension.”***

**29.** The law as laid down by the Hon'ble Supreme Court would therefore mandate that a suspension order being issued; the currency of the same, would not extend 3(three) months if within this period; the memorandum of charges/ charge-sheet is not served on the delinquent officer/ employee. The second part of the law mandates that if the memorandum of charges/charge-sheet is served; a reasoned order must be passed for the extension of the suspension. The second part of the law declared by the Hon'ble Supreme Court, cannot be read in isolation and has to be read in conjunction with the first part. Accordingly, it is to be understood that a currency of an order of suspension while not being permissible to be extended beyond 3(three) months from the date of its issue, if a memorandum of charges/charge-sheet is not served on the delinquent officer/ employee and if a memorandum of charges/charge-sheet is so issued within the period of 3(three) months; the same must necessarily be accompanied with a reasoned order extending the order of suspension. In other words, either, on the date, a memorandum of charges/charge-sheet is so issued and/or invariably on the date; the same is served on the delinquent concerned; such memorandum of charges/ charge-sheet must necessarily be accompanied with a reasoned order extending the suspension of the delinquent. The effect of non-service of such a reasoned

order on the delinquent, when the memorandum of charges/charge-sheet is so served; would be that the order of suspension would cease to operate and the delinquent officer/employee, would be required to be reinstated in his service.

**30.** Applying the conclusions reached hereinabove to the facts and circumstances of the present case, it is an admitted position that neither, on the date of issuance of the Show Cause Notice, dated 24.06.2023, to the petitioner, herein, nor, on the date, it was so served upon him; the respondent authorities had not, on a review, carried-out of the suspension order of the petitioner, issued a reasoned order for the extension of the period of his suspension and served the same on him. Accordingly, applying the law declared by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra) in paragraph No. 21 thereof; this Court has no hesitation to hold that the suspension of the petitioner, ceased to have an effect and the same, cannot be said to be in currency after the date, the Show Cause Notice, dated 24.06.2023, was served upon the petitioner. The subsequent extensions as effected with regard to the period of suspension of the petitioner, in view of the above-noted lacunae, would be of no consequence. Having noticed the above position, this Court holds that the Notification of suspension issued in respect of the petitioner, herein, having become void, on account of non-compliance of the law laid down by the Hon'ble Supreme Court in paragraph No. 21 of the **Ajay Kumar Choudhary** (supra) and the Office Memorandum, dated 04.02.2020; the petitioner is now entitled to be reinstated in his service forthwith.

**31.** Although an affidavit was filed in the matter by the respondent authorities; this Court had required the Mr. Nayak, learned standing counsel, Public Works(Roads) Department, to produce the original records of the case.

This Court had perused the records, in question, as placed before this Court, more particularly, to understand the grounds on which the petitioner's order of suspension was decided to be so extended.

**32.** On perusal of the records, in question, and also the Notes leading to the issuance of the orders of extension of the petitioner; this Court had found that the same was so done only basing on the fact that a criminal proceeding was so initiated against him and the same was pending. The reports of the investigating agency were also referred for justification of the continuance of suspension of the petitioner, herein. This Court, given the disclosure made from the records, is not satisfied with the reasoning so advanced for the purpose of continuation of the period of suspension of the petitioner.

**33.** In view of the above; the Notification, dated 18.03.2023, placing the petitioner under suspension, stands set aside with immediate effect and the petitioner, herein, is directed to be reinstated in his service.

**34.** However, noticing the allegations so levelled against the petitioner and appreciating the fact that his continuation may not be called for against a post of sensitive nature; this Court by relying on the further directions as passed by the Hon'ble Supreme Court in paragraph No. 21 of the **Ajay Kumar Choudhary**(supra); directs that the respondent authorities would be free to transfer the petitioner to any other post existing in the Department so as to prevent the petitioner from misusing and/or obstructing the investigation pending against him. The respondent authorities would also be at liberty to pass such direction(s) with regard to the duties required to be so performed by the petitioner in the matter.

**35.** In this connection, the observation made by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra) in paragraph No. 21, is again extracted hereinbelow, for ready reference:

**“21. .... As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”**

**36.** Having reached the above conclusions; this Court would now like to consider the submissions of Mr. Nayak, learned standing counsel, Public Works(Roads) Department, that even if this Court interferes with the order of suspension; the respondent authorities would be at liberty to again place the petitioner, herein, under suspension and in this connection, he has relied upon the decision of this Court in the case of **Ajit Sonowal**(supra). The said submission of the learned standing counsel, Public Works(Roads) Department, is so noticed only to be rejected. In the case of **Ajit Sonowal** (supra); the delinquent was placed under suspension under the provisions of Rule 6(2) of the Assam Services (Disciplinary & Appeal) Rules, 1964, on he being placed under detention in a criminal proceeding so initiated against him. This Court after discussing the various decisions relied upon in the matter and by noticing that the petitioner was so placed under suspension by invoking the provisions of Rule 6(2) of the Assam Services (Disciplinary & Appeal) Rules, 1964, and no

departmental proceeding was so initiated against him while he was initially placed under suspension, proceeded to pass the following directions:

***“17. For the reasons stated herein above, we hold that there is no merit in this appeal. However, since Rule 6(1)(a) of the Rules of 1964 permits the authorities to place an employee under suspension when a disciplinary proceeding against him is contemplated or is pending and considering the fact that disciplinary proceeding has, in the meantime, been initiated against respondent No 1 by serving a memorandum of charges upon him, we make it clear that this order would not come in the way of the Disciplinary Authority from exercising jurisdiction under Rule 6(1) of the Rules of 1964 and issue a fresh order of suspension, if so advised.”***

**37.** A perusal of the said directions rendered by the Division Bench of this Court in the case of **Ajit Sonowal**(supra) would go to show that this Court had held that the provisions of Rule 6(1)(a) of the Assam Services (Disciplinary & Appeal) Rules, 1964, permits the authorities to place an employee under suspension when a departmental proceeding against him is contemplated or is pending or considering the fact that the departmental proceeding was so initiated against the delinquent therein; the Division Bench of this Court had permitted the authorities in taking appropriate decision in the matter in exercise of powers of Rule 6(1) of the Assam Services (Disciplinary & Appeal) Rules, 1964.

**38.** In the case on hand, the power of Rule 6(1)(a) of the Assam Services (Disciplinary & Appeal) Rules, 1964, has already been exercised by the respondent authorities and the petitioner was placed under suspension vide issuance of the Notification, dated 18.03.2023. Accordingly, basing on the decision of the Division Bench of this Court, which is so based on facts distinguishable from that involved in the present proceeding; the respondent authorities would not be empowered to place the petitioner again under suspension by invoking under Rule 6(1)(a) of Assam Services (Disciplinary &

Appeal) Rules, 1964. However, this Court observes that in the event, there is fresh allegations of misconduct coming on record against the petitioner, herein, and/or it is found that the petitioner is trying to influence the witnesses or tamper with records pertaining to the departmental proceedings; the respondent authorities would be at liberty to exercise its powers under Rule 6(1)(a) of the Assam Services (Disciplinary & Appeal) Rules, 1964, to place the petitioner under suspension after recording justifiable reasons for the same.

**39.** This Court has also taken note of the contentions of Mr. Nayak, learned standing counsel, Public Works(Roads) Department, to the effect that the Hon'ble Supreme Court, had after laying down the law in paragraph No. 21 of **Ajay Kumar Choudhary**(supra), had not extended the same to the appellant, therein, in paragraph No. 22 of the decision. The said contention is not required to be considered by this Court, inasmuch as, this Court is bound by the law as laid down by the Hon'ble Supreme Court in paragraph No. 21 of the said decision. The law being so declared by the Hon'ble Supreme Court, the appellant in the case of **Ajay Kumar Choudhary**(supra), having already been served with a charge-sheet, before such declaration, the Hon'ble Court had had granted liberty to the appellant, therein, to challenge his continued suspension in any manner, known to law. It is also to be noted that the Hon'ble Court in paragraph No. 22 of the decision of **Ajay Kumar Choudhary**(supra), had not carved-out any exception to the law laid down by it in paragraph No. 21 of the said decision.

**40.** With the above directions and observations, this writ petition, accordingly, stands disposed of.

**41.** The records as produced by Mr. Nayak, learned standing counsel, Public Works(Roads) Department, be returned.

**JUDGE**

**Comparing Assistant**